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IN THE  
UNITED STATES SUPREME COURT  
OCTOBER TERM, 1983

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RANDY LYNN WOOLLS,

Petitioner

V.

THE STATE OF TEXAS,

Respondent

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On Petition For Writ Of Certiorari  
To The Texas Court Of Criminal Appeals

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RESPONDENT'S OPPOSITION TO PETITIONER'S  
APPLICATION FOR STAY OF EXECUTION AND TO  
PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

- I. WHETHER THE FEDERAL ADMINISTRATIVE PROCEDURES ACT AUTHORIZES JUDICIAL REVIEW OF THE FOOD AND DRUG ADMINISTRATION'S DECISION NOT TO REGULATE THE USE OF DRUGS IN EXECUTIONS.
- II. WHETHER PETITIONER IS ENTITLED TO A STAY OF EXECUTION UNDER RULE 44, RULES OF THE SUPREME COURT OF THE UNITED STATES.

TABLE OF CONTENTS

	<u>Page</u>
QUESTIONS PRESENTED . . . . .	i
INDEX OF AUTHORITIES. . . . .	iii
OPINION BELOW . . . . .	1
JURISDICTION. . . . .	2
CONSTITUTIONAL PROVISIONS INVOLVED. . . . .	2
STATEMENT OF THE CASE . . . . .	2
STATEMENT OF THE FACTS. . . . .	2
SUMMARY OF ARGUMENT . . . . .	2
REASONS FOR DENYING THE WRIT. . . . .	4
I.    THE QUESTION PRESENTED FOR REVIEW IS UNWORTHY OF THIS COURT'S ATTENTION. . . . .	4
II.   THIS COURT IS WITHOUT JURISDICTION ON A PETITION FOR WRIT OF CERTIORARI TO CONSIDER PETITIONER'S CLAIM THAT THE FEDERAL ADMINISTRATIVE PROCEDURES ACT AUTHORIZES JUDICIAL REVIEW OF THE FOOD AND DRUG ADMINISTRATION'S DECISION NOT TO REGULATE THE USE OF DRUGS IN EXECUTIONS. . . . .	4
III.  PETITIONER'S REQUEST FOR STAY OF EXECUTION UNDER RULE 44 IS IMPROPER BECAUSE HE HAS PRESENTED NO ISSUES FOR REVIEW IN THIS COURT AND HAS DEMONSTRATED NO EXTRAORDINARY CIRCUM- STANCES JUSTIFYING THE STAY . . . . .	5
CONCLUSION. . . . .	5

## INDEX OF AUTHORITIES

<u>Cases</u>	<u>Page</u>
Beck v. Washington, 369 U.S. 541 (1962) . . . . .	5
Cardinale v. Louisiana 394 U.S. 437 (1969). . . . .	4
Crowell v. Randell, 10 Pet. 268 (1836). . . . .	4
Godchaux Co., Inc. v. Estopinal, 251 U.S. 179 (1919). .	5
Hill v. California, 401 U.S. 797 (1971) . . . . .	4
Illinois v. Gates, 103 S.Ct. 2317 (1983). . . . .	4
Owings v. Norwood's Lessee, 5 Cranch 344 (1809) . . . .	4
Tacon v. Arizona, 410 U.S. 351 (1973) . . . . .	4
Wcolls v. Texas, 655 S.W.2d 455 (Tex.Crim.App. 1983) . . . . .	1
 <u>Statutes and Rules</u>	
28 U.S.C. §1257(3). . . . .	2
Tex. Code Crim. Proc. Ann. art. 37.071 (Vernon) . . . .	2
Judiciary Act of 1789, 20, Section 25, 1 Stat. 85 . . .	
Rule 17, Rules of the Supreme Court . . . . .	3,4
Rule 20, Rules of the Supreme Court . . . . .	2,3
Rule 44, Rules of the Supreme Court . . . . .	3,5

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TO THE HONORABLE BYRON R. WHITE, ASSOCIATE JUSTICE  
OF THE UNITED STATES AND CIRCUIT JUSTICE FOR  
THE FIETH CIRCUIT:

NOW COMES the State of Texas, Respondent herein, by and through its attorney, the Attorney General of Texas, and files this opposition to Petitioner's application for stay of execution and to his petition for writ of certiorari.

OPINION BELOW

The opinion of the Texas Court of Criminal Appeals is reproduced at 655 S.W.2d 455 (Tex.Crim.App. 1983) and was issued on March 9, 1983. Rehearing was denied on February 29, 1984. Petitioner has appended a copy of that opinion to his petition herein.

### JURISDICTION

It appears that Petitioner may seek to invoke the jurisdiction of this Court under the provisions of 28 U.S.C. §1257(3).

### CONSTITUTIONAL PROVISIONS INVOLVED

Petitioner bases his claims upon the Fifth, Eighth and Fourteenth Amendments to the United States Constitution.

### STATEMENT OF THE CASE

The record reflects that Petitioner was convicted in the 119th Judicial District Court of Tom Green County, Texas, for the murder of Betty Stotts while in the course of committing robbery. The jury found Petitioner guilty of the offense of capital murder and after a punishment hearing answered affirmatively the special issues submitted pursuant to Article 37.071, Tex. Code Crim. Proc. Ann. (Vernon). Thereafter, punishment was assessed at death and Petitioner appealed his conviction and sentence to the Texas Court of Criminal Appeals. Petitioner's conviction was affirmed by the court en banc on March 9, 1983, and a petition for rehearing was denied on February 29, 1984. The sixty-day time period for the filing of a petition for writ of certiorari with this Court expired April 30, 1984.

On May 11, 1984, Petitioner was sentenced to be executed before sunrise on July 10, 1984.

Petitioner filed his application for stay and petition for writ of certiorari with this Court on or about July 2, 1984.

### STATEMENT OF FACTS

The facts relevant to Petitioner's claims are set forth in the opinion of the Texas Court of Criminal Appeals as heretofore cited and as attached to Petitioner's application.

### SUMMARY OF ARGUMENT

Petitioner has advanced no special or important reasons for the granting of a writ of certiorari.

Under Rule 20 of the Rules of this Court, a petition for writ of certiorari to review a decision of the Texas Court of Criminal Appeals must have been filed within sixty days after the

entry of final judgment by that court with an additional thirty-day extension available for good cause shown. Under Rule 20.3, "The Clerk will refuse to receive any petition for a writ of certiorari which is jurisdictionally out of time." Accordingly, Petitioner's petition for writ of certiorari presents nothing for this Court's review. Moreover, Petitioner raises in the body of his petition for writ of certiorari, the question of whether the Federal Administrative Procedures Act authorizes judicial review of the Food and Drug Administration's decision not to regulate the state's use of drugs in executions -- an issue which Petitioner has never raised in any lower court and which accordingly does not provide any jurisdiction for the review of such issue on petition for writ of certiorari in this Court. Rule 17, Rules of the Supreme Court of the United States. Nor can Petitioner assert any special or important reason for granting a petition for writ of certiorari on the other issues raised in this petition. Rule 17.1, Rules of the Supreme Court of the United States.

Finally, a petitioner's request for a stay should not be entertained "except in the most extraordinary circumstances, unless application for the relief sought first has been made to the appropriate court or courts below, or to a judge or judges thereof." Rule 44.4, Rules of the Supreme Court of the United States. Petitioner has made no such application for stay to any other court. Petitioner should apply for stay in the appropriate federal district court where proper review of the issues raised and orderly attention to Petitioner's claims may be obtained. The stays contemplated under Rule 44 are intended to allow this Court to review matters pending before it. Rule 44.2, Rules of the Supreme Court of the United States. Accordingly, because Petitioner has presented nothing for review in this Court, a stay under Rule 44 is inappropriate. Respondent respectfully suggests that Petitioner should pursue his application for stay in the appropriate federal district court.

## REASONS FOR DENYING THE WRIT

### I. THE QUESTION PRESENTED FOR REVIEW IS UNWORTHY OF THIS COURT'S ATTENTION.

Rule 17 of the Rules of the Supreme Court provides that review on writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only when there are special and important reasons therefor. Petitioner has advanced no special or important reason in this case and none exists. Further, this case presents only the question whether well-settled constitutional principles were correctly applied to the facts of this case. Thus, no important question of law is presented herein.

### II. THIS COURT IS WITHOUT JURISDICTION ON A PETITION FOR WRIT OF CERTIORARI TO CONSIDER PETITIONER'S CLAIM THAT THE FEDERAL ADMINISTRATIVE PROCEDURES ACT AUTHORIZES JUDICIAL REVIEW OF THE FOOD AND DRUG ADMINISTRATION'S DECISION NOT TO REGULATE THE USE OF DRUGS IN EXECUTIONS.

It is axiomatic that this Court will not decide issues raised for the first time on petition for writ of certiorari or on appeal, and that the Court will not decide federal questions not raised and decided in the court below. E.g., Illinois v. Gates, 103 S.Ct. 2317, 2321-23 (1983); Tacon v. Arizona, 410 U.S. 351, 352 (1973); Hill v. California, 401 U.S. 797, 805-06 (1971); Cardinale v. Louisiana, 394 U.S. 437, 438 (1969). In articulating this requirement, the Court has stressed the long-standing nature of the rule: "[I]n Crowell v. Randell, 10 Pet. 268 (1836), Justice Story reviewed the earlier cases commencing with Owings v. Norwood's Lessee, 5 Cranch 344 (1809), and came to the conclusion that the Judiciary Act of 1789, 20, Section 25, 1 Stat. 85, vested this Court with no jurisdiction unless a federal question was raised and decided in the state court below. 'If both of these do not appear on the record, the appellate jurisdiction fails.' 10 Pet. 368, 391." Cardinale v. Louisiana, 394 U.S. at 439. To properly invoke the jurisdiction of the Court, it is crucial that the federal question not only be raised in the state proceedings, but that it be raised at the proper point.



Beck v. Washington, 369 U.S. 541, 550 (1962); Godchaux Co., Inc. v. Estopinal, 251 U.S. 179, 181 (1919). Here, Petitioner's claim regarding the Food and Drug Administration's decision not to regulate use of the drugs employed in executions never has been raised in any court below. It is not, therefore, properly before this Court for review.

III. PETITIONER'S REQUEST FOR STAY OF EXECUTION  
UNDER RULE 44 IS IMPROPER BECAUSE HE HAS  
PRESENTED NO ISSUES FOR REVIEW IN THIS COURT  
AND HAS DEMONSTRATED NO EXTRAORDINARY  
CIRCUMSTANCES JUSTIFYING THE STAY.

Under Rule 44.2, "[w]henever a party desires a stay pending review in this Court, he may present . . . to a justice of this Court, a motion to stay the enforcement of the judgment of which review is sought." Because this Court has no jurisdiction to entertain a petition for writ of certiorari in this matter as set forth above, there is nothing presented for this Court's review, and because Rule 44 contemplates a stay pending review, Petitioner has not presented an appropriate basis for stay. Moreover, Petitioner must demonstrate the "most extraordinary circumstances" unless he can show that the stay has been sought in the appropriate courts below. Petitioner has had since May 11, 1984, within which to pursue a stay of the sentence of execution imposed on that date. No applications for stay have been filed in the lower courts. Accordingly, Petitioner has failed to provide a basis upon which a stay may be granted by this Court.

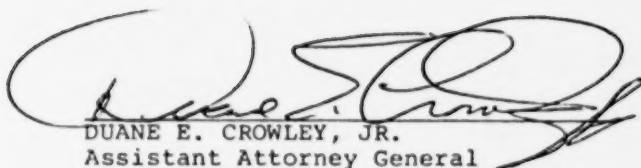
CONCLUSION

For these reasons, Respondent respectfully requests that Petitioner's petition for writ of certiorari be denied and that Petitioner's application for stay of execution be also denied.

Respectfully submitted,

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